

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं माननीय श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.103/Chny/2025, निर्धारण वर्ष/Assessment Year: 2015-16

Income Tax Officer, Non-Corporate Ward-4(3) Coimbatore	v.	Damayanti Ramachandran, PB No.5303, GN Mills Post, Coimbatore, Tamil Nadu-641029 [PAN: AABHD8298Q]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
CO No.19/Chny/2025, निर्धारण वर्ष/Assessment Year: 2015-16		
Damayanti Ramachandran, PB No.5303, GN Mills Post, Coimbatore, Tamil Nadu-641029 [PAN: AABHD8298Q]	v.	Income Tax Officer, Non-Corporate Ward-4(3) Coimbatore
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
आयकर अपील सं./ITA No.149/Chny/2025, निर्धारण वर्ष/Assessment Year: 2016-17		
Income Tax Officer, Non-Corporate Ward-4(3) Coimbatore	v.	Damayanti Ramachandran, PB No.5303, GN Mills Post, Coimbatore, Tamil Nadu-641029 [PAN: AABHD8298Q]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
CO No.20/Chny/2025, निर्धारण वर्ष/Assessment Year: 2016-17		
Damayanti Ramachandran, PB No.5303, GN Mills Post, Coimbatore, Tamil Nadu-641029 [PAN: AABHD8298Q]	v.	Income Tax Officer, Non-Corporate Ward-4(3) Coimbatore
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.Ketan K. Ved, C.A



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प्रत्यर्थी की ओर से /Respondent by	:	Mr.Bipin C.N, CIT
सुनवाईकीतारीख/Date of Hearing	:	25.06.2025
घोषणाकीतारीख /Date of Pronouncement	:	07.08.2025

आदेश / ORDER

PER BENCH:

These appeals are filed against the order of the learned Commissioner of Income Tax (Appeals), NFAC, Delhi [In short "the Id.CIT(A)"] for the A.Y. 2015-16 and 2016-17 vide orders dated 29.11.2024 and 19.11.2024 respectively.

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2. Grounds of appeal of the Revenue:

*i). The decision of Ld CIT(A) is based placing reliance on the provisions of sections 28(iv), 2(47) and 45(4) as "Prior to the amendment of section 45(4) of the Act vide Finance Act, 2021 w.e.f. 01.04.2021, section 45(4) of the Act says that the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm association or body, of the previous year in which the said transfer took place". The CIT(A) NFAC has relied upon various decisions of the Apex court and High courts. **Whether the Decision of the Ld.CIT(A) is acceptable for the reason that, the facts and circumstances of the case is distinguishable from those cited in the case laws relied upon by the assessee and the Ld CIT(A).***

ii). Whether the decision of the Ld CIT(A) is correct in the light of the judgment of the Hon'ble Apex court in the case of McDowell & Co. Ltd. v. CTO [1985] 22 Taxman 11 (SC) held that tax planning may be legitimate, provided it is within the frame work of law. Colourable devices cannot be a part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay taxes honestly, without resorting to subterfuges. Here, the assessee being one of the partners of the erstwhile firm having derived a gain in the process of revaluation and reconstitution of the firm is liable to tax to the extent of compensation received on relinquishment of his rights in the share of profits of the firm, as a result of reconstitution.



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iii). Whether the Ld CIT(A) was right in not considering the fact that, the assessee HUF is in receipt of compensation in lieu of relinquishment of its share of business profits in the Firm and continued to be a partner in the same, having share of 0.01%, even after re-constitution of the firm, as per amended deed.

iv). Whether the Ld CIT(A) hasn't failed to appreciate that, the facts of current case are clearly distinct from the facts of the case laws cited by the assessee HUF, The entities which entered into Memorandum of Family Arrangement dated 05.05.2013 had clearly distinct and exclusive rights represented in the form of share holding/profit sharing ratios in Texmo Industries and Texmo Precision Castings. Hence, the transaction in instant case is not of members of a family taking a share of common property by virtue of independent title. It is rather relinquishment of exclusive assets/rights in favour of another for which clearly defined consideration is received.

v). Whether the Ld CIT(A) was right in not appreciating the fact that, in this case, as evidenced, by the provisions of Memorandum of Family Arrangement and amended trust deeds of TI and TPC, the transfer of rights in profit sharing ratio was in lieu for substantial consideration, with clear business motive and hence, the same is taxable u/s 28(iv) of the Act.

vi). Whether the Ld CIT(A) was right by not appreciating that, the decision rendered in the case of CIT Vs. Nijrang Specific family Trust (Guj) 287 ITR 148, wherein it is held that, assessee retiring from partnership Compensation received for goodwill treated as Income from Other Sources- is squarely applicable in the present case. As such, the AO has computed the income of the assessee HUF, who has received compensation akin to the case cited above, under income from business.

vii). Whether the Ld CIT(A) was right in not considering the fact that, the AO, even though having placed a reference of section 2(47) in para 4.1 of the assessment order in one instance, did not discuss the scope of section 45(4) of the Act anywhere in the assessment order. The addition in the hands of the assessee has been made as income from business, being in the nature of a compensation received by the assessee HUF, as discussed elaborately in the assessment order. But, Ld CIT(A) has, made elaborate discussion on section 45(4), which is not relevant in the context of the assessee's case, thereby diluting the efforts made by the AO to bring to books the unaccounted/undisclosed income earned by the assessee under the guise of family arrangement, which it is not. The AO has not taken recourse to sec 45(4) in the assessment order while bringing to tax the amount of Rs. 29,13,00,000/-. Here, the order of Ld CIT(A) is against facts and law.

viii). The Ld CIT(A) failed to appreciate the fact that, in this case, the assessee HUF has been compensated with Rs. 29.13 crores for forgoing its share of (business) profits to the extent of 99.9% in the business of the firm, as per the re-constitution/revaluation of the said firm, but still continuing as a partner with 0.01% share. The benefit/perquisite as envisaged in section 28 of the Act includes any money received



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under an agreement wherein the party performing the activity is compensated for not engaging in any activity related to their trade or profession.

ix). The Ld CIT(A) failed to appreciate that, the Memorandum of family Arrangement maintained the share of assessee HUF at 0.01% so much so as to escape the rigours of section 45(4) of the Income tax Act, after having transferred the share of Good will to the said HUF, being a colourable device to evade taxes thereon.

x). The Ld CIT(A) failed to take into consideration, the ratio of case laws on similar issue held by the Apex court and other Appellate authorities.

xi) Whether the Ld.CIT(A) was right in not considering the analysis of the case laws submitted by the assessee and its applicability in this case.

3. The brief facts of the case are that the assessee is a HUF, filed its original return of income for the A.Y. 2015-16 on 24.09.2015 declaring total income at Rs.10,74,060/-. A survey action u/s.133 was conducted on 22.05.2019 in the case of M/s.Textmo Industries, in which the assessee HUF was a partner. During the course of survey it was revealed that during the previous year 2013-14 relevant to the A.Y.2014-15. M/s.Textmo industries and M/s.Textmo Precision Castings were reconstituted. Both the firms had revalued its business to reconstitute the partnership. Textmo Industries was revalued at Rs.901.85 Crores (Goodwill on revaluation was Rs.712.26 Crores) and M/s.Textmo Precision Castings (TPC) was revalued at Rs.64.17 Crores. There was no goodwill in the case of TPC. Consequent to the reconstitution, the assessee HUF was to receive Rs.237,41,97,625/- from M/s.Textmo Industries (TI) by way of goodwill. From M/s.Textmo Precision Castings the assessee HUF was to receive as sum of Rs.37.54 Crores. As a part of reconstitution, the profit sharing ratio was revised and the assessee HUF share was revised to 0.01% in both the firms. The assessee HUF ceased to exist in the year 2015. It filed its last return for the Assessment Year 2016-17 with interest income to the tune of 25,426/- (para 3 to 4.3 of the Assessment Order). However, the assessee HUF continued as partner with 0.01% share in the amended partnership deed being represented by Ms.Damayanti Ramachandran in the individual capacity.



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3.1 In this case, notice u/s.148 of the Act were issued for both the A.Ys. for the income escaping assessment in the hands of the assessee HUF after recording proper reasons and on approvals from specified authority as stated by the revenue. In response to this notice assessee filed returns of income for the both the A.Ys., with the same income as disclosed vide their original income tax returns.

3.2 The assessment was completed u/s.147 r.w.s.144 r.w.s.144B by the NFAC on a total income of Rs. 29,23,74,060/- for AY-2015-16 as against the returned of income of Rs. 10,74,060/-, And Rs.238,59,15,430/- for AY-2016-17 as against the returned of income of Rs.15430/-. While completing the assessments, it was held by the AO that,

"Consequent on the reconstitution, the assessee HUF was to receive Rs.2,37,41,97,625/- from M/s.Texmo Industries by way of goodwill. From M/s.Texmo Precision Castings, the assessee HUF was to receive as sum of Rs.37.54 Crores. As a part of reconstitution, the profit-sharing ratio was revised and the assessee HUF share was revised to 0.01% in both the firms. The assessee HUF ceased to exist in the year 2015. Section 28(iv) of the Income tax Act lays down that "the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable to income tax under the head profits and gains of business or profession" In the case of the assessee it had withdrawn its share of extra income received on account of revaluation of the business of the firms in which it was a partner and had started to pay the amount to M/s.Ramchandran Trust for Arjunan as per the newly inserted clauses in amended partnership deed."

4. The aggrieved assessee filed appeal before the Id.CIT(A) and the same was decided in favour of the assessee, by holding that the provisions of section 45(4) are not attracted in this case, there is no escapement of income in the hands of the assessee HUF. The Id.CIT(A) also held that the income does not come u/s.28(iv) of the Act based on the submissions of the assessee. Aggrieved by the orders of the Id.CIT(A), the revenue is in appeal before us for both the A.Ys.2015-16 and 2016-17.



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5. The Id.CIT - DR for the revenue submitted that the revaluation of the firms resulting in the income u/s.28(iv) of the Act. The facts and the sequence of events culminating in the receipt of goodwill by the its partners and the assessee Damayanti Ramachandran is submitted by the Id.DR.

- Ms.Damayanthi Ramachandran, M/s.Ramachandran Trust for Arjun (Sole beneficiary Arjunan) and Ramachandran Trust for Shivan (Shivan and Ms.Damayanthi Ramachandran are beneficiaries) were the partners in M/s.Textmo Industries and M/s.Textmo Precision Castings.
- As per the original share holding, the partners are having profit sharing ratio in the said firms as on 01.04.2013 was as under:

SL. No	Name of the Partnership firm	Damayanthi Ramachandran (HUF)	RR Trust for Arjunan (Sole beneficiary Arjunan)	RR Trust for Shisan (Shivan and Mrs. Damayanthi Ramachandran are sole beneficiaries)
1	Textmo Precision Castings (TPC)	30%	35%	35%
2	Textmo Industries (11) 50%	50%	25%	25%

- On 05.05.2013, R Ramachandran (HUF) / Damayanthi Ramachandran (HUF), Arjunan Ramachandran, Shivan Ramachandran, Damayanti Ramachandran, R.Ramachandran Trust for Arjunan and Ramachandran Trust for Shivan entered into a Memorandum of Family Arrangement.
- As stated in clause E-I and ii of the said Memorandum, the family members had agreed that
 - a. interest of the family members (held directly/indirectly) in the partnership firm Textmo Industries should be adjusted for eventual independent control and/or management would vest with Shivan,
 - b. interest of the family members (held directly/indirectly) in the partnership firm Textmo Precision Castings should be adjusted for eventual independent control and/or management would vest with Arjunan.
- Post the restructuring envisaged in the Memorandum of Family Arrangement, the percentage of share in TPC and TI for the family members were as under:



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SL. No	Name of the Partnership firm	Damayanthi Ramachandran (HUF)	Share of Arjunanindi	RR Trust for Arjunan (Sole beneficiary Arjunan)	RR Trust for Shivan (Shivan and Mrs. Damayanthi Ramachandran are the beneficiaries)
1	Texmo Precision Castings (TPC)	0.01%	0.01%	99.97%	0.01%
2	Texmo Industries (TI)	0.01%	--	0.01%	99.98%

- Partnership deeds of Texmo Industries and Texmo Precision Castings were amended on 06.05.2013 to give effect to the change in shareholding envisaged in the Memorandum of Family Arrangement dated 05.05.2013.
- Change in Profit Sharing Ratio/Rights:

Sl. No.	Name of the Partner	Texmo Industries (11) (Old New Share Holding)	Texmo. Precision Castings (TPC) (old – New Share Holding)
1	Damayanthi Ramachandran (HUF)	50%-0.01%(-49.99%)	30%-0.01% (-29.97%)
2	RR Trust for Arjunan (Solebeneficiary Arjunan)	25%-0.01% (-24.99%)	35%-99.97%(+64.97%)
3	IRR Trust for Shivan (Shivan and Mrs.Damayanthi Ramachandran are the sole beneficiaries)	25%-99.98%(+74.98%)	35%-0.01%(-34.90%)

- Also a revaluation of firm Texmo Industries was done and the increase in valuation of Rs.712.27 crores was treated as valuation of goodwill. Business Revaluation / valuation of goodwill of TI as on 31.03.2012 Revaluation report dated.17.12.2012.

Business revaluation of TI	Rs.901.85 Crores
Book value of TI	Rs. 189.58 crores
Difference treated as goodwill	Rs. 712.27 Crores

- The Goodwill created on the revaluation of assets of M/s.Texmo Industries was not credited to the capital/current account of the Partners as on 31.03.2013. It was credited to the current accounts of the Partners in Texmo Industries as on 31.03.2014.



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- The Goodwill amounting to Rs.712.267 Crores was reflected in the Balance Sheet of Texmo Industries as on 31.03.2014. Subsequently, Texmo Industries has debited an amount of Rs.744.75 Crores (not Rs.712.26 Crores) to the current accounts of the partners as "Receipts during the year" as under:

Name in the Partner	Current account balance before revaluation as on 01.04.2013 (Rs.in Crores)	Credit of goodwill nomenclature Receipts during the year (Rs. in Crores)	Current account balance after credit of goodwill a on 31.03.2014 (Rs. in Crores)
Damayanthi Ramachandran (HUF)	128.23	237.49	318.43
RR Trust for Arjunan	91.75	329.00	408.21
RR Trust for Shivan	90.39	178.06	346.48

- In the above background, the re-opened assessment proceedings were initiated in the case of HUF for the A.Ys. mentioned for the reasons stated against each AY.

Sl.No.	Name of the Assessee/PAN	Status	AY	Gist of reason for reopening of the assessment
1	Mix. Damayanthi Ramachandran (HUF)/AADHD82980	HUF	2015-16	Withdrawal of amount from the current account of Ms. Texmo Industries (23.05 cr) and M/s. Texmo Precision Castings (6.08 cr) on account of goodwill amounting to Rs.29.13 Crores
2	Damayanthi Ramachandran (HUF)/AABHD52950	HUF	2016-17	HUF ceased to exist. Balance amount receivable from M/s Texmo Industries and M/s Texmo Precision Castings as on 31.03.2016 Rs.207.13 Crores & Rs.31.46 Crores totalling to Rs.238.59 Crores was considered to be the income escaped

- It is submitted that the benefit that is the goodwill generated in the business is an intangible asset that is recorded in the Balance sheet of the assessee. The same is converted into cash and credited into the current account of the assessee. The value of the goodwill that is converted into cash and credited into the current account of the assessee is taxable u/s.28(iv) of the Act.

5.1 The Id.DR further tried to distinguish between the claim of Family Arrangement and the Business Arrangement. He submitted that the arrangement entered into by the partners (beneficiaries) of the firms, namely the HUF and others, is on business



matter and not on family dispute or property matter as claimed by the assessee. Hence, this agreement shall not be termed as a family arrangement, rather it shall be named as a "Business Arrangement".

5.2 As per the Id.DR the definitions of Family Arrangement & Business Arrangement are as given below:

Family Arrangement:

A family arrangement is an agreement among family members to settle disputes or distribute property, often to maintain family harmony and avoid litigation.

Business Arrangement:

A business arrangement is a formal agreement between individuals or entities aimed at achieving a specific commercial or business objective. It involves legal and financial obligations with a focus on profitability and operational efficiency.

5.3 In essence, family arrangements are often rooted in familial bonds and aim to maintain those bonds, while business arrangements are primarily driven by commercial goals.

Family Arrangement & Business arrangement distinguished as under:

Salient Features	Family arrangement	Business arrangement
Formal contracts & agreements	Not necessarily	Necessary
Outlining the share in profits	No	Yes
Establish frame work for business operations	No	Yes
Family Property	Yes	No
Parties involved	Members of a family	Entities
For conduct of business	No	Yes
Potential interest in	Family property	Business assets

5.4 The Id.DR submitted that a simple comprehension of facts as available from the arrangement, partnership deeds and revaluation of assets will evidently throw light



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into the fact that, the arrangement entered into by the entities, including the HUF and other partners of the firms possess all the salient features of a "business Arrangement" and not those of any family arrangement. The findings which will surely emerge out of the above said analysis are as under:

(i) The assessee HUF was a partner in the firms M/s.Textmo Industries and M/s.Textmo Precision castings, which implies that as per the accounting principles and in the eyes of law the Firm, the HUF and other partners are distinct identities forming integral parts of a business

(ii) The revaluation of assets is made that of the firm in which the assessee HUF is a partner and hence, the introduction of goodwill thus enhancing the assets of the business entity firm is part of a business activity.

(iii) The share percentage of assessee HUF in TCI as well as TPCL has been brought down to 0.01% from 50% and 30% respectively, as enjoyed by the HUF before the reconstitution. Here the assessee HUF has sacrificed by extinguishing its shares in the business profits of the firms.

(iv) The above said reconstitution in profit sharing ratio of the partners of the firm implies that the same has been carried out in order to apportion the benefits derived out of business profit to each partner post reconstitution.

(v) vide the reconstitution deed (named as family agreement) the assessee HUF in the capacity of a partner in the firm's business and its profits, even after extinguishing its shares continued to be partner with 0.01% share in the profits.

(vi) The assessee HUF as well as other partners of the firm received credits in their books in the current accounts as compensation against relinquishment of share in the profits of the firm.

(vii) since the revaluation has been carried out in the assets of the business firm and since no revaluation happened in the assets of HUF, the agreement entered into by the firms and its partners can only be termed as a business arrangement and not a family arrangement. No family property has been revalued nor assets distributed to its members.

(viii) The compensation received by the assessee HUF is absorbed by the provisions of Section 28(iv) of the Act and not under any other provisions of the act.

(ix) On careful examination of the course of incidents reveal that the assessee firm has resorted to a device wherein the taxability of income in the hands of the firm as well as its compensated partners could be avoided or rather evaded, in such a way that the revaluation of intangible assets in the form of goodwill of the firm is carried



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out in the year 2012 and subsequent arrangements to transfer the funds from the capital assets of the firm to the current accounts of its partner in a planned manner.

(x) In order to escape the rigorous of Section 45(4) of the Act, the HUF even after relinquishing its shares in profits, continued to hold 0.01% stake in its profit because in the event of retirement of the partner, the credits into current accounts of the partners could have been taxed in the hands of the firm. On the other hand, the assessee consciously prepared a shield and made efforts to escape tax compliance by forming an agreement in the name and style of family agreement, whereas it is not.

5.5 The assessee has claimed that the transaction undertaken by the assessee is a family arrangement and there is no transfer in the family arrangement citing various case laws and therefore Section 47 and 45(4) are not applicable to the assessee and there is no capital gain in this case. The assessee has brought in the claim of the family arrangement in order to claim that the transaction under consideration is not transfer and therefore the same cannot be brought to tax under the Sections of Capital Gain Tax under the Act.

5.6 In this connection the Id.DR submitted that the transaction question is not a transfer as per the Act and the Section applicable to the transaction is 28(iv) of the Act and therefore the claim of the assessee about transfer and the cited case laws are not applicable in this regard.

5.7 The Id.DR submitted that the revaluation of firm M/s.Texmo Industries was done and the increase in valuation of Rs.712.27 crores was treated as valuation of goodwill. Business Revaluation / valuation of goodwill of TI as on 31.03.2012 Revaluation report dated. 17.12.2012.

Business revaluation of TI	Rs.901.85 Crores
Book value of TI	Rs. 189.58 crores
Difference treated as goodwill	Rs. 712.27 Crores

The Goodwill created on the revaluation of assets of M/s.Texmo Industries was credited to the current accounts of the Partners in M/s.Texmo Industries as on 31.03.2014.



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5.8 He further submitted that the Firm where the assessee is a partner is revalued, and the "Good Will" is brought into the books of accounts of the assessee. The Id.DR stated that the transaction and the income that is received by the assessee by converting the intangible assets of goodwill in the books of the Firms and receiving the benefit is squarely taxable u/s.28(iv) of the Act.

The Section 28(iv) in the Act is extracted for reference:

"(iv) [the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession:]"

The term used in the section is "the value of benefit". The phrase used as "whether convertible into money or not" is clarificatory to emphasis and include all benefits arising from performance of business or profession. As submitted by the assessee, the section does not give immunity to any of the benefits as exemption from considering the same out of the ambit of section 28(iv) of the Act.

5.9 In the case of the assessee, the "benefit" is the assessee's share of goodwill credited (convertible into money) into its current account, and the value is Rs.29.13 Crore and Rs.238.59 Crore for each of the A.Ys. The performance of business by the assessee here is relinquishment of share in the profits, as per the business arrangement entered into by the assessee with the Firms.

The issue involved in Mahindra & Mahindra case quoted by the assessee is:

"Amount received as cash receipt due to the waiver of loan".

The Id.DR submitted that in the instant case, the assessee does not have any facts similar to the facts in the case of Mahindra & Mahindra cited by the assessee. And there is no applicability in this case. Similarly, the case laws cited by the assessee are distinguishable from that of the assessee, so much that, all the other case laws cited are emerging out of Mahindra & Mahindra case law and the assessee's in all



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those case laws enjoyed benefits directly in the form of money or in the form of cash, as brought out by the hon'ble courts.

5.10 Therefore, the Id.DR argued that in the instant case, the benefit is the share of goodwill, which is booked as intangible asset in the books of the firm, which was transferred to the current account of the assessee, as part of performance of business and the same was convertible into money. Hence, the instant case of the assessee HUF is a typical example for the one best fitted into the ambit of section 28(iv) of the Act.

5.11 Further the Id.DR relied on the Hon.ble Madras High Court in Ramaniyam Homes (P.) Ltd. wherein it was held that:

"Amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv)".

Here, the assessee has benefitted by receiving its share of Firm's Good will credited into its books (in current account), as a one-time settlement, for sacrificing its share of profits in the Firm. Therefore, the case laws quoted by the assessee are not applicable to the facts of the present case and are clearly distinguishable and not applicable in the present case and hence prayed for setting aside the order of the Id.CIT(A) by confirming the order of the AO.

6.0 Per contra the Id.AR for the assessee submitted that the assessee as seen in the above table the initial family arrangement reducing the stake of the assessee in the partnership firms (M/s.Textmo Industries and M/s.Textmo Precision Castings) took place in A.Y.2014-15 and he drew our attention to the family arrangement of the paper book. [Sl. 5(a), Page- 563 to 580]. Further, the Id.AR submitted that the Id.CIT(A) in his order dated 29.11.2024 vide DIN No: ITBA/NFAC/S/250/2024-25/1070758503(1) has examined the applicability of Section 28(iv) in the assessee's case (Para 9.4, pg 62) and held that the provisions of section 28(iv) have no applicability in the present case.



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6.1 He also submitted that the Id. CIT(A) has referred to the ruling of the Mumbai Bench of the ITAT in the case of *Dy. CIT v. Manish M. Chheda [2009] 29 SOT 138 (Mum.)*, wherein the Hon'ble Mumbai ITAT has held that:

"since no benefit or perquisite arose to partners in course of business carried on, section 28(iv) could not be applied to bring sum in question to tax in hands of partners of firm. Even otherwise, increase in capital of a partner as a result of revaluation of assets of firm did not have nexus with business of firm and, therefore, could not be brought within ambit of section 28(iv)."

6.2 The Id. CIT(A) has stated that one of the conditions necessary for the applicability of section 28(iv) is that the benefit or perquisite sought to be taxed must be arising in the course of business carried on and has placed his reliance on the case of *CIT v. Smt. Chetanaben B. Sheth [1993] 203 ITR 24*, wherein the Hon'ble Gujarat High Court had held that amount received by an assessee-partner of a firm towards valuation of goodwill and assets of a firm at the time of retirement from the firm does not attract provisions of section 28(iv) since the same cannot be said to be a perquisite arising from the business and that even otherwise it would not partake the character of income. Besides the above, increase in capital of a partner as a result of revaluation of assets of firm has no nexus with the business of firm and, therefore, cannot be brought within the ambit of section 28(iv).

6.3 Hence, the Id. CIT(A) has concluded that the provisions of section 28(iv) could not be applied to bring the sum in question to tax in the hands of the partners of the firm. The relevant screenshot is attached below:

Above discussion clearly show that no benefit or perquisite arose to partner in course of business carried on and therefore section 28(iv) could not be applied to bring sum in question to tax in hands of partner of firms. Further, increase in partner's capital as a result of revaluation of asset of firm did not have any nexus with business of the firm. Therefore, there is no applicability of section 28(iv) in the present scenario.



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6.4 Further, the Id.AR submitted that the provisions of section 28(iv) do not apply to the facts of the case and stated that the Section 28 of the Act lays down the income that shall be chargeable to tax under the head profits and gains from business and profession ('PGBP'). As per clause (iv) of section 28 the Act as applicable to the captioned AY, the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable to tax under the head PGBP. The said provisions deal with the taxation of benefits and perquisites in kind i.e., non-monetary benefits arising from business or profession.

In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of Mahindra and Mahindra vs. Commissioner (404 ITR 1 – SC) where it is held as under:

"On a plain reading of Section 28 (iv) of the IT Act, prima facie, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of Section 28 (iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape of money.

In the present case, it is a matter of record that the amount of Rs.57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28 (iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs.57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act."

6.5 In the present case, the Id.AR drew our attention to para 5(viii) and facts of the case stated in para (xi) of the appeal by the Revenue for the AY 2015-16 wherein the AO has held that the assessee had withdrawn its share of extra income received on account of revaluation of the business of the partnership firms. Relevant extract of the appeal is captured as under:

viii) The Ld. CIT(A) failed to appreciate the fact that, in this case, the assessee HUF has been compensated with rs.29.13 crores for forgoing its share of (business)



profits to the extent of 99.9% in the business of the firm, as per the re-constitution / revaluation of the said firm, but still continuing as a partner with 0.01% share. The benefit / perquisite as envisaged in section 28 of the Act includes any money received under an agreement wherein the party performing the activity is compensated for not engaging in any activity related to their trade or profession.

<p>Additional Commissioner of Income Tax vs. Mohanbhai Pambhal, (SC)</p>	<p>In this case, 4 partners of a firm retired from the firm and received their share of capital including share of goodwill which was an asset of the firm. It was held in this case by hon'ble Court that: When a partner retires from a partnership and the amount of his share in the net partnership assets...is determined and given to him, what he receives is his share in the partnership and not any consideration for transfer of his interest in the partnership to the continuing partners. His share in the partnership is worked out in the manner prescribed by the relevant provisions of the partnership law and it is this (his share in the partnership) which he receives in terms of money. There is in this transaction no element of transfer of interest in the partnership assets by the retiring partner to the continuing partners</p>	<p>In case of Ramachandran Family Group, the revalued goodwill of firm Texmo Industries was credited into the current accounts of partners and not their capital Subsequently, money was withdrawn from the current account by partners in lieu of the reduction in profit sharing rights. The Memorandum of Family Arrangement impounded during the Survey establishes that the withdrawals from firm is in lieu for reduction of profit-sharing rights.</p>	<p>It is submitted that, in the cited case law, partners have retired and withdrew money from their capital account. The retirement of partners and consequent assignment of profit-sharing rights to continuing partners was held to be not a transfer for the purpose of section 45 of Income tax Act. However, in case of Ramachandran Family Group, the memorandum of Family Arrangement clearly establishes that, the withdrawals from firm is in lieu for reduction of profit sharing rights. Also, the funds withdrawn are from the current account of partners and not the capital account.</p>
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6.6 Therefore, the AO has contended that the assessee has withdrawn monies from the partnership firms. In such a case, without prejudice to the argument that no money has been withdrawn by the assessee, even if considered as withdrawn, the provisions of section 28(iv) would not come into play given that no non-monetary perquisites were received by the assessee.



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6.7 The Id.AR submitted that the revaluation of business and subsequent withdrawal by the partners cannot be regarded as income u/s.28(iv) of the Act. This has been discussed in various judicial precedents and the same are summarized as under:

6.8 In the case of *Chetnaben B. Seth 203 ITR 24(Guj)*, Hon'ble Gujarat High Court has held that amount received by an assessee partner of a firm towards valuation of goodwill and assets of a firm at the time of retirement from the firm does not attract provisions of section 28 (iv) of the Act, since, the same cannot be said to be a perquisite arising from the business and that even otherwise it would not partake the character of income.

6.9 Further, in the case of *DCIT Vs Manish M. Chheda (ITAT Mumbai) ITA No. 2703/Mum/07*, it was held that view that the increase in capital of partner as a result of revaluation of assets of the firm has no nexus with the business of the firm and therefore cannot be brought within the ambit of section 28(iv) of the Act. We therefore hold that provisions of section 28 (iv) cannot be applied.

6.10 At this juncture, the Id.AR placed reliance on the ruling of the Hon'ble Bombay High Court in the case of *Ramona Pinto v. DCIT [2024] 464 ITR 305 (Bombay)* wherein the Hon'ble Court held that, settlement amount received by an assessee for relinquishing all her rights and claims as a partner in a partnership firm was related to her retirement from firm and was not in nature of income chargeable to tax. Further, the Hon'ble court placing reliance on the ruling of the Hon'ble Supreme Court in the case of *Mahindra & Mahindra (supra)* has also held that a monetary amount cannot be assessed under the provisions of section 28(iv) of the Act. Relevant extract of the ruling is reproduced as under:



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"This submission can be rejected straight away because the CIT(A) has, in paragraph 7.8 of his order, accepted Respondent's contentions relying on Mahindra & Mahindra Ltd. v. CIT [2003] 128 Taxman 394/261 ITR 501 (Bom.), Commissioner v. Mahindra and Mahindra Ltd. [2018] 93 taxmann.com 32/255 Taxman 305/404 ITR 1 (SC) as approved by the Apex Court that Section 28(iv) does not apply to benefits in cash or money and that the benefit or perquisite which can be brought to tax under the said Section is a benefit in kind. A monetary amount, as in the present case, cannot be assessed under the said Section. CIT v. Mafatlal Gangabhai & Co. (P.) Ltd. [1996] 85 Taxman 381/219 ITR 644 (SC) also supports this view where the Apex Court was considering a similar provision which used the words "whether convertible into money or not" following the words "any benefit or amenity or perquisite". Their submission was that what is within the mischief of the sub clause is an expenditure incurred for providing a benefit, amenity or perquisite to an employee and that a cash payment to the employee is not an "expenditure" contemplated by the sub clause and the use of the qualifying words "whether convertible into money or not" puts the matter beyond doubt. The Apex Court held that the language employed in the sub clause is not capable of taking within its ambit cash payments made to the employees by the assessee because they cannot be brought within the purview of the words "any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite" more so because of the following words "whether convertible into money or not". In fact the Tribunal also accepted this position in the impugned order.

Therefore, as this aspect of the matter has been decided in favour of Respondent by both the Appellate Authorities and the Revenue was not in appeal before the High Court, it was also not open to the Revenue to raise the issue at this stage."

6.11 Hence, the Id.AR argued that in the present case of the assessee, no benefits in kind were received by the assessee for the year under consideration warranting any additions u/s.28(iv) of the Act.

6.12 Therefore, in view of the above, the Id.AR pleaded that the provisions of section 28(iv) of the Act are not applicable in the case of the assessee, and hence prayed that the appeal filed by the revenue authorities ought to be dismissed.

7.0 We have heard the rival contentions perused the material available on record and gone through the orders of the lower authorities along with paper books and case laws relied on. The assessee is a HUF filed original return of income for AY



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2015-16 on 24.9.2015 declaring total income at Rs.10,74,060/-. Survey action u/s.133A was conducted on 22.05.2019 in the case of M/s.Textmo Industries in which the assessee HUF was a partner. During the course of the Survey, it was revealed that during the previous year relevant to the A.Y.2014-15, M/s.Textmo Industries and M/s.Textmo Precision Castings were reconstituted. Both the firms had revalued their business to reconstitute the partnership. M/s.Textmo Industries was revalued at Rs.901.85 Crores (Goodwill on revaluation was determined at Rs.712.26 Crores) and M/s.Textmo Precision Castings was revalued at Rs.64.17 Crores (There was no goodwill in the case of Textmo Precision Castings).

7.1 Later, the notice u/s.148 of Act was issued on 05.11.2019 after recording the reason for the income escaping assessment in the hand of the assessee. In response to this notice, assessee filed its return of income on 03.12.2019. The assessee raised objection for issuance of notice u/s.148 of the Act. The AO clarified that proceedings u/s.147 of the Act for the A.Y.2015-16 has been initiated on the basis of definite information available with department.

7.2 The assessee and related persons/entities entered into an arrangement. The assessee HUF's share in profits of M/s.Textmo Industries was reduced from 50% to 0.01% and in profits of M/s.Textmo Precision Castings from 30% to 0.01% in F.Y.2013-14 (with effect from 21.07.2015, assessee HUF ceased to exist and total partition of assessee HUF had taken place. As per amended partnership deed dated 06.08.2015, the share of the HUF was vested with Mrs.Damayanti Ramchandran in her individual capacity.

7.3 The AO examined the return of income filed by the assessee and along with the other related facts. The AO found that the assessee had not admitted extra profit share received on account of revaluation of the business of M/s.Textmo Industries and M/s.Textmo Precision Castings. As per the facts mentioned in the assessment order and the submissions of the assessee, the assessee had to receive Rs.237.41



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Crores from M/s.Textmo Industries and Rs.37.54 Crores from M/s.Textmo Precision Castings on account of revaluation of those firms. The AO states that as per terms and conditions of supplementary deed, the assessee had paid a sum of Rs.23.05 Crores, received from M/s.Textmo Industries to M/s.Ramchandran Trust for Arjunan and had received a sum of Rs.6.08 Crores from M/s.Textmo Precision Castings. The AO has held that assessee had made withdrawal as per the terms and conditions in the amended partnership deed and there was actual withdrawal of cash by the assessee from the goodwill credited to its current account. However, assessee disputes this fact. It says there was no actual withdrawal. The AO has made out a case that assessee failed to declare the income on account of extra profits received due to credit of goodwill in its current account (goodwill determined while revaluation of M/s.Textmo Industries).

7.4 The assessee made detailed submissions before the AO, arguing that amount credited to its current account, due to revaluation of M/s.Textmo Industries and M/s.Textmo Precision Castings, is not taxable. The AO did not accept assessee's contention and made addition of Rs.29,13,00,000/- to the total income of the assessee by passing an order u/s.147 of the Act dated 18.09.2021 by determining the total income at Rs.29,23,74,060/-.

7.5 The assessee before the Id.CIT(A), NFAC, pleaded that the amount withdrawn from the partnership firms M/s.Textmo Industries and M/s.Textmo Precision Castings are not taxable, however the AO has misread facts as well as the provisions of Section 28(iv) of the Act and brought to tax. After considering the submissions and on perusal of the documents and related judicial precedents relied on by the assessee, the Id.CIT(A) deleted the additions for the following reasons:

- No benefit or perquisite arose to partner in the course of business carried on and therefore section 28(iv) could not be applied to bring sum in question to tax in the hands of the partner of the firms.



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- Further, increase in partner's capital as a result of revaluation of asset of the firm did not have any nexus with the business of the firm.
- Reconstitution of the firm does not result in income of the partners as has been held in catena of judgments.
- Further, the family arrangements do not amount to transfer and hence not taxable.
- It is a settled position of law that any sum received by the retiring partner in a partnership is not taxable in the hands of the partners. Transfer undertaken pursuant to the family does not attract provisions of section 2(47) of the Act.
- In a family arrangement there is a realignment of interest among the family members and there is no alienation or transfer of property by relying on the decision of the Hon'ble jurisdictional High Court in the case of National Company (415 ITR 5), wherein it was held that the allotment to the partner of retiring partner of his share in assets of partnership firm after deduction of liabilities is not transfer within the meaning section 2(47) of the Act and capital gain cannot be taxed u/s.45(4) of the Act.

7.6 The decision of the Id.CIT(A) has been further challenged before us by revenue by raising various grounds of appeal. The revenue contended that the revaluation of the firms resulting in the income u/s.28(iv) of the Act based on the following facts and events:

- Ms.Damayanthi Ramachandran, M/s.Ramachandran Trust for Arjun (Sole beneficiary Arjunan) and Ramachandran Trust for Shivan (Shivan and Ms.Damayanthi Ramachandran are beneficiaries) were the partners in M/s.Textmo Industries and M/s.Textmo Precision Castings.
- As per the original share holding, the partners are having profit sharing ratio in the said firms as on 01.04.2013 was as under:

SL. No	Name of the Partnership firm	Damayanthi Ramachandran (HUF)	RR Trust for Arjunan (Sole beneficiary Arjunan)	RR Trust for Shisan (Shivan and Mrs. Damayanthi Ramachandran are sole beneficiaries)
1	Texmo Precision Castings (TPC)	30%	35%	35%
2	Texmo Industries (11) 50%	50%	25%	25%



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- On 05.05.2013, R Ramachandran (HUF) / Damayanthi Ramachandran (HUF), Arjunan Ramachandran, Shivan Ramachandran, Damayanti Ramachandran, R.Ramachandran Trust for Arjunan and Ramachandran Trust for Shivan entered into a Memorandum of Family Arrangement.
- As stated in clause E-I and ii of the said Memorandum, the family members had agreed that
 - a. interest of the family members (held directly/indirectly) in the partnership firm Texmo Industries should be adjusted for eventual independent control and/or management would vest with Shivan
 - b. interest of the family members (held directly/indirectly) in the partnership firm Texmo Precision Castings should be adjusted for eventual independent control and/or management would vest with Arjunan.
- Post the restructuring envisaged in the Memorandum of Family Arrangement, the percentage of share in TPC and TI for the family members were as under:

SL. No	Name of the Partnership firm	Damayanthi Ramachandran (HUF)	Share of Arjunan	RR Trust for Arjunan (Sole beneficiary Arjunan)	RR Trust for Shivan (Shivan and Mrs. Damayanthi Ramachandran are the beneficiaries)
1	Texmo Precision Castings (TPC)	0.01%	0.01%	99.97%	0.01%
2	Texmo Industries (TI)	0.01%	--	0.01%	99.98%

- Partnership deeds of Texmo Industries and Texmo Precision Castings were amended on 06.05.2013 to give effect to the change in shareholding envisaged in the Memorandum of Family Arrangement dated 05.05.2013.
- Change in Profit Sharing Ratio/Rights:

Sl. No.	Name of the Partner	Texmo Industries (11) (Old New Share Holding)	Texmo. Precision Castings (TPC) (old – New Share Holding)
1	Damayanthi Ramachandran (HUF)	50%-0.01%(-49.99%)	30%-0.01% (-29.97%)
2	RR Trust for Arjunan (Sole beneficiary Arjunan)	25%-0.01% (-24.99%)	35%-99.97%(+64.97%)
3	IRR Trust for Shivan (Shivan and Mrs.Damayanthi Ramachandran are the sole beneficiaries)	25%-99.98%(+74.98%)	35%-0.01%(-34.90%)



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- Also a revaluation of firm Texmo Industries was done and the increase in valuation of Rs.712.27 crores was treated as valuation of goodwill. Business Revaluation / valuation of goodwill of TI as on 31.03.2012 Revaluation report dated.17.12.2012.

Business revaluation of TI	Rs.901.85 Crores
Book value of TI	Rs. 189.58 crores
Difference treated as goodwill	Rs. 712.27 Crores

- The Goodwill created on the revaluation of assets of M/s.Texmo Industries was not credited to the capital/current account of the Partners as on 31.03.2013. It was credited to the current accounts of the Partners in Texmo Industries as on 31.03.2014.
- The Goodwill amounting to Rs.712.267 Crores was reflected in the Balance Sheet of Texmo Industries as on 31.03.2014. Subsequently, Texmo Industries has debited an amount of Rs.744.75 Crores (not Rs.712.26 Crores) to the current accounts of the partners as "Receipts during the year" as under:

Name in the Partner	Current account balance before revaluation as on 01.04.2013 (Rs.in Crores)	Credit of goodwill nomenclature Receipts during the year (Rs. in Crores)	Current account balance after credit of goodwill a on 31.03.2014 (Rs. in Crores)
Damayanthi Ramachandran (HUF)	128.23	237.49	318.43
RR Trust for Arjunan	91.75	329.20	408.21
RR Trust for Shivan	90.39	178.06	346.48

7.7 The goodwill generated in the business is an intangible asset that is recorded in the Balance sheet of the assessee. The same is converted into cash and credited into the current account of the assessee. The value of the goodwill that is converted into cash and credited into the current account of the assessee is taxable u/s.28(iv) of the Act.

7.8 The revenue tried to distinguish between the claim of Family Arrangement and the Business Arrangement. The claim of the revenue that the arrangement entered into by the partners (beneficiaries) of the firms, namely the HUF and others, is on



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business matter and not on family dispute or property matter as claimed by the assessee is not acceptable in the eyes of law. We find that the reconstitution of partnership deed has been made by altering the share of profit among the partners based on the family arrangement, wherein all the partners are of one family. Hence, we find that, this agreement is in substance a family arrangement and therefore the same cannot be called as "Business Arrangement" as claimed by the revenue.

7.9 That as per page No.563 to 580 of the paper book filed by the assessee we find that the family arrangement reducing the stake of the assessee in the partnership firms (M/s.Texmo Industries and M/s.Texmo Precision Castings) took place in A.Y.2014-15. The same has been observed by the Id.CIT(A) in his order and in that context before deciding the issue in favour of the assessee, he has examined the applicability of Section 28(iv) in the assessee's case, thereby held that the provisions of section 28(iv) have no applicability in the present case.

7.10 The decision of the Mumbai Bench of the Tribunal in the case of *Dy. CIT v. Manish M.Chheda [2009] 29 SOT 138 (Mum.)*, is aptly apply here, which has been rightly considered by the Id.CIT(A) while deciding the disputed issue of the assessee, wherein the Hon'ble Mumbai ITAT has held that:

"since no benefit or perquisite arose to partners in course of business carried on, section 28(iv) could not be applied to bring sum in question to tax in hands of partners of firm. Even otherwise, increase in capital of a partner as a result of revaluation of assets of firm did not have nexus with business of firm and, therefore, could not be brought within ambit of section 28(iv)."

7.11 It is also noted that one of the conditions necessary for the applicability of section 28(iv) is that the benefit or perquisite sought to be taxed must be arising in the course of business carried on. This has been fortified in the case of *CIT v. Smt. Chetanaben B. Sheth [1993] 203 ITR 24*, wherein the Hon'ble Gujarat High Court had held that:

"amount received by an assessee-partner of a firm towards valuation of goodwill and assets of a firm at the time of retirement from the firm does not attract provisions of



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section 28(iv) since the same cannot be said to be a perquisite arising from the business and that even otherwise it would not partake the character of income. Besides the above, increase in capital of a partner as a result of revaluation of assets of firm has no nexus with the business of firm and, therefore, cannot be brought within the ambit of section 28(iv)."

Therefore, the decision of Id. CIT(A) in concluding that the provisions of section 28(iv) is not applicable to the present case cannot be found faulted with.

7.12 As concerned to the applicability of clause (iv) of section 28 the Act to the captioned A.Y. 2014-15, the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable to tax under the head Profit and gains of business or profession. The said provision deal with the taxation of benefits and perquisites in kind i.e., non-monetary benefits arising from business or profession. Our above view is based on the decision of the Hon'ble Supreme Court in the case of Mahindra and Mahindra vs. Commissioner (404 ITR 1 – SC) wherein it is held as under:

"On a plain reading of Section 28 (iv) of the IT Act, prima facie, it appears that for the applicability of the said provision, the income which can be taxed shall arise from the business or profession. Also, in order to invoke the provision of Section 28 (iv) of the IT Act, the benefit which is received has to be in some other form rather than in the shape of money.

In the present case, it is a matter of record that the amount of Rs.57,74,064/- is having received as cash receipt due to the waiver of loan. Therefore, the very first condition of Section 28 (iv) of the IT Act which says any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money, is not satisfied in the present case. Hence, in our view, in no circumstances, it can be said that the amount of Rs.57,74,064/- can be taxed under the provisions of Section 28 (iv) of the IT Act."

Hence, the AO is not justified in holding that the assessee has withdrawn monies from the partnership firms for the reason that no money has been withdrawn by the assessee, even if considered as withdrawn, the provisions of section 28(iv) would not come into play given that no non-monetary perquisites were received by the assessee.



7.13 We also find that the revaluation of business and subsequent withdrawal by the partners cannot be regarded as income u/s.28(iv) of the Act according to the following judicial precedents:

- a)** *Chetnaben B. Seth 203 ITR 24(Guj)*, wherein the Hon'ble Gujarat High Court has held that amount received by an assessee partner of a firm towards valuation of goodwill and assets of a firm at the time of retirement from the firm does not attract provisions of section 28 (iv) of the Act, since, the same cannot be said to be a perquisite arising from the business and that even otherwise it would not partake the character of income.
- b)** *DCIT Vs Manish M. Chheda (ITAT Mumbai) ITA No. 2703/Mum/07*, it was held that view that the increase in capital of partner as a result of revaluation of assets of the firm has no nexus with the business of the firm and therefore cannot be brought within the ambit of section 28(iv) of the Act. We therefore hold that provisions of section 28 (iv) cannot be applied.
- c)** *The Hon'ble Bombay High Court - Ramona Pinto v. DCIT [2024] 464 ITR 305 (Bombay)* wherein it was held that, settlement amount received by an assessee for relinquishing all her rights and claims as a partner in a partnership firm was related to her retirement from firm and was not in nature of income chargeable to tax. Further, the Hon'ble court placing reliance on the ruling of the Hon'ble Supreme Court in the case of *Mahindra & Mahindra (supra)* has also held that a monetary amount cannot be assessed under the provisions of section 28(iv) of the Act.

7.14 In view of the above reasoning and in the present facts and circumstances of the case, we are of the considered view that the AO has erred in treating the amount withdrawn from the partner as a result of the reconstitution as income chargeable to tax u/s.28(iv) of the Act. Hence, there is no reason to interfere in the order of the Id.CIT(A) and thus dismiss the grounds of appeal raised by the revenue.



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8. The assessee has raised the following grounds in its Cross objection:

1. Non opportunity of being heard granted

The Hon'ble Commissioner of Income-tax (Appeals) ('Ld. CIT(A)') has erred in law and facts, in concluding that the opportunity of being heard was granted to the respondent without appreciating that no video conferencing took place on the schedule date and time.

2. Reassessment proceedings are not as per the procedure mandated by the Apex Court

- *The order passed by the Ld. CIT(A) of validating the re-assessment proceedings under section 147 on is not in conformity with the law, facts and circumstances of the case.*
- *The Ld. CIT(A) has erred in concluding that reopening of assessment under section 148 of the Act has been done after adhering to the due process of law as laid down in the Act and the reassessment procedure is followed by the Ld. AD as per the procedure mandated by the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd v. ITO (2003) 259 ITR 19.*
- *The Ld. CIT(A) has erred in concluding that there was no arbitrariness in reasons to believe furnished by Ld. AD.*
- *The Ld. CIT(A) has erred in concluding that the AD is correct in establishing that the respondent had failed to provide true and correct particulars of income.*

3. Taxability of income arising on account of reconstitution of firm

- *Reliance by the Ld. AO on section 28(iv) of the Act to argue that the transfer of rights in profit-sharing ratio was in lieu of substantial consideration is bad in law as the same is without considering the order of Ld. CIT(A) wherein it has been concluded that provisions of section 28(iv) of the Act are not applicable under the facts and circumstances of the present case.*
- *Reliance by the Ld. AO on the decision of CIT vs. Nijrang Specific family trust (Guj) 287 ITR 148, wherein it is held that the compensation received by the assessee retiring from partnership for goodwill should be treated as income from other sources is bad in law as the same is not applicable on the facts and circumstances of the present case.*
- *Reliance by the Ld. AO on the decision of Hon'ble Supreme Court in the case of McDowell & Co. Limited v CTO [1985] 22 Taxman 11, to argue that share of the assessee HUF has been maintained in the family arrangement as a colorable devise to evade taxes thereon, is bad in law as the same is not applicable on the facts and circumstances of the present case.*



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The Respondent submits that each of the above grounds is independent and without prejudice to one another.

The Respondent craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law.

9. The Id.AR for the assessee submitted the sequence of events in connection with the reassessment proceedings in case of the assessee, which is also captured in the impugned Order dated 29.11.2024 passed by the Id. CIT(A) is as under [Page No. 34 of the CIT(A) order]

Date	Event	Relevant page of the Paper Book
22.05.2019	A survey was undertaken on the premises of Texmo Industries ('TI').	-
05.11.2019	Notice issued u/s. 148 of the Income-tax Act, 1961 ('the Act').	601-601
03.12.2019	Return of income filed by the assessee and reasons for reopening of the assessment sought for by the assessee in accordance with the decision of the Hon'ble Apex Court in the case of GKN Driveshafts (India) Limited v. ITO [2003] 259 ITR 19 [SC] vide the letter dated 04 December 2019.	603-617
29.09.2020	Notice issued u/s. 143(2) read with section 147 of the Act calling for information and also extracting therein the reasons purported to have been recorded for reopening of assessment.	528-531
15.10.2020	Submission filed against the above letter cum Notice. It was clarified therein that the reasons as recorded for re-opening were not furnished to the assessee and without prejudice detailed objections were filed to the so-called reasons mentioned in the aforesaid Notice u/s. 143(2). It was also prayed that in accordance with the decision of the Hon'ble Apex Court in the case of GKN Driveshafts (supra), the objections to reopening be disposed off by way of a speaking order [paragraph No. 1.4 on page No. 532 of the Paper	532-600



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	<i>Book].</i>	
19.07.2021	Notice issued u/s. 142(1) of the Act calling for details and information in connection with the reassessment proceedings.	227-228
26.07.2021	Submission filed against the above notice u/s.142(1). Further, without prejudice it was also submitted that the objection raised against reopening of the case vide our submission dated 15.10.2020 was not yet disposed off. <i>[Pg. 231 of the paper book]</i>	230-527
10.09.2021	Show-cause Notice issued for the proposed variation along with a draft of the assessment order to be passed. Included in the said draft assessment order, was a so-called disposal of the objections raised by the assessee against the reasons communicated for reopening of the assessment.	137-145
13.09.2021	Detailed submission filed against the show-cause notice as to why the proposed variation ought not be made to the total income.	148-158
16.09.2021	Letter received for intimating the schedule for personal hearing through video conferencing on 17 September 2021 at 3:15 PM.	
17.09.2021	Respondent joined through the link provided at 3:15 PM. However, the learned AO did not appear for the hearing- Respondent had filed a letter with the learned AO requesting to provide another slot for personal hearing.	32-37
18.09.2021	Impugned re-assessment order passed.	Order attached in the memo of the cross objections filed.

10. The Id.AR for the assessee submitted that the AO failed to dispose of the objections by passing a speaking order before proceeding with the assessment as mandated by the settled procedure laid down by the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Limited v. ITO [2003] 259 ITR 19 [SC]* wherein it has been clearly laid down as under:



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"However, it was clarified that when a notice under section 148 is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notice. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons had been disclosed in the proceedings, the Assessing Officer had to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment." (emphasis supplied by us)

As can be seen from the above table:

- i. Reasons as recorded for reopening the assessment have never been provided / served upon the assessee;
- ii. Without prejudice to the aforesaid, even if for a moment, one were proceed on the basis that the reasons as provided in the Notice u/s.143(2) dated 29.09.2020 were the reasons validly recorded for reopening the assessment, the same were not disposed of prior to commencement of the assessment proceedings.

10.1 Objections were filed by the assessee vide letter dated 15.10.2020. Thereafter, Notice dated 19.07.2021 has been issued u/s.142(1) of the Act, thereby commencing the assessment proceedings. The said Notice was replied to by the assessee vide its letter dated 26.07.2021.

10.2 Thereafter, the AO has issued a SCN dated 10.09.2021 and a draft re-assessment order dated 13.09.2021 by rejecting the objection for reopening of the assessment raised by the assessee in the said SCN/draft order and termed as purportedly disposing of the objections.

10.3 Further, the Id.AR submitted that it is clearly against the law laid down by the Hon'ble Supreme Court as well as the jurisdictional Madras High Court in the case of *Commissioner of Income Tax, Chennai v. Janak Shantilal Mehta [2021] 277 Taxman 598 (Madras)* wherein it was held by the Hon'ble Madras High Court that the *Tribunal was right in quashing reassessment proceedings by Assessing Officer on the*



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ground that reasons for reopening were not communicated to assessee and despite opportunities, revenue was not able to produce any evidence to show that reasons recorded for reopening had been provided to assessee as requested by them in their letter.

10.4 Further Id.AR brought to our attention to the decision of the coordinate bench of Tribunal in the case of *IDFC First Bank Ltd. v. PCIT/ACIT ITA No. 1170 & 1171/CHNY/2024 (AY 2016-17)* wherein in similar fact set, the Tribunal has quashed the re-assessment proceedings conducted contrary to the procedure / law laid down by the Hon'ble Apex Court in the case of *GKN Driveshafts Ltd. (supra)*. Relevant findings of the Tribunal are reproduced hereunder for ready reference:

"after a notice u/s.148 of the Act has been issued by him, the assessee needs to file a return pursuant to such a notice; and if the assessee seek reason for issuing such notice, the AO is bound to furnish reasons for reopening the assessment, within a reasonable time; and on receipt of reasons, the assessee is entitled to file objections [against issuance of re-opening notice] and in that event, the AO is bound to dispose off the same (objections) by passing a speaking order before proceeding with there-assessment in respect of assessee's case.

*Where the AO without disposing of the objections raised by the assessee, had intriguingly dealt with the objections against the reopening of assessment in the body of re-assessment order, which action of the AO was in gross defiance to the binding direction of the Hon'ble Supreme Court (supra) and was an attempt to over-reach the Apex Court by noncompliance to the procedure stipulated therein. Therefore, the impugned action of the AO is an attempt to defeat the purpose of such an exercise to be carried out by the AO and against the binding decision of the Hon'ble Supreme Court. It is noted that the AO has disposed off the objections in the body of the reassessment order which action of the AO is gross-defiance to the order of the Hon'ble Supreme Court in the case of *M/s.GKN Driveshafts (India) Ltd.* and against the Hon'ble Bombay High Court in the case of *Asian Paints Ltd. Bharat Jayanthi Lal Patel (supra)*, wherein their Lordships have given clear directions that the AO must dispose off the objections raised by the assessee against re-opening and facilitate at least four (4) weeks time before re-assessment order is framed, so that assessee may prefer filing of Writ Petition before the Hon'ble jurisdictional High Court against the re-opening of assessment.*



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In the light of the above discussion, we are of the view that the assessee succeeds on the legal issue that the AO failed to comply with the binding directions of the Hon'ble Supreme Court in the case of M/s.GKN Driveshafts (India) Ltd., before framing the reassessment order. The AO rejecting objections of the assessee against re-opening by merely doing so while passing the re-assessment order, wouldn't come to the rescue of the Revenue because such an action of AO is noted to be in gross defiance to the binding order of the Hon'ble Supreme Court; and the AO couldn't have over reached the order of the Hon'ble Supreme Court by disposing off the objections while framing the re-assessment order, which defeats the purpose of such an exercise as discussed supra. Therefore, we hold that the omission on the part of the AO to comply with the directions of the Hon'ble Supreme Court in the case of M/s.GKN Driveshafts (India) Ltd., strikes at the root of the jurisdiction of the AO to re-open the assessment and consequent passing of reassessment order dated 31.03.2022 is held to be non-est in the eyes of law and all other grounds are academic and not adjudicated. Therefore, on the legal issue as discussed, we quash the re-assessment order dated 31.03.2022 passed u/s.147/143(3) of the Act for AY 2016-17."

10.5 Further, reliance is also placed on the judgement in the case of in the case of *CIT v. Fomento Resorts and Hotels Ltd., (Bom.)*; ITA No. 71 of 2006, dated 27.11.2006, where the Tribunal held that though the reopening of the assessment is within three years from the end of the relevant assessment year, since the reasons recorded for reopening the assessment were not furnished to the assessee till the completion of the assessment, the reassessment order cannot be upheld.

10.6 The Id.AR further referred the case of *Home Finders Housing Ltd. v. ITO (2018) 404 ITR 611 (Mad-HC)*, as relied by the Revenue is addressed in the aforesaid decision of *IDFC Bank Ltd. V. PCIT/ACIT (supra)* wherein,

"the Hon'ble Madras High Court was of the view that non-compliance of the procedure indicated in the case of M/s. GKN Driveshafts (India) Ltd., was only an irregularity which could be cured by remitting the matter to the authority. The Ld. Sr. Counsel further pointed out that the Hon'ble Madras High Court in Home Finders Housing Ltd. (supra), noted that the assessee in that case at no point of time requested the AO to pass a speaking order disposing off the objections (refer Para No.12). However, in the present case, the Ld. Sr. Counsel pointed out that the assessee had specifically requested the AO to pass a speaking order disposing off the objections as laid down by the Hon'ble Supreme Court in the case of M/s. GKN



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Driveshafts (India) Ltd. (supra) and in addition to such a request, also prayed before the AO to dispose off the objections at least four (4) weeks before framing of re-assessment order as held by the Hon'ble Bombay High Court in the case of Asian Paints Limited v. DCIT & anr. (2008) 296 ITR 90 (Bom) and also in the case of Bharat Jayantilal Patel v. UOI reported in [2015] 378 ITR 596 (Bom.), which fact we find from perusal of Page No.86 of the Paper Book. Thus, according to the Ld. Sr. Counsel, it can be noted that the decision of the Hon'ble Madras High Court in the case of Home Finders Housing Ltd. (order dated 25.04.2018), is distinguishable on the facts and not applicable to the present case."

Further, it was held that, "the order in the case of Home Finders Housing Ltd., (supra) was a decision rendered earlier to the decision held by the Hon'ble Division Bench in CIT v. Janak Shanthilal Mehta (supra) and in such an event i.e. when there are two conflicting views between the order of Hon'ble High Court of co-equal strength (of the same Court) then, later pronouncement of the Hon'ble Court is binding on us."

10.7 In light of the above arguments the Id.AR prayed to quash the reassessment order passed by the AO as void ab initio.

11.0 Per contra the Id.DR submitted that a survey under Section 133A of the Income Tax Act was conducted by the Income Tax Department and subsequently the Assessment proceedings were initiated by issuing the Notice u/s.148 of the Act dated 05.09.2019 of the Act. He submitted that the compliance as per the directions of the Hon'ble Supreme Court in the case of M/s.GKN Driveshaft (supra) has been complied by the AO during the course of the Assessment proceedings. The sequence of events as required and that was complied by the Assessing Officer is tabulated as follows;

S.No.	Dates	Events	Remarks
1.	05.11.2019	Notice U/s. 148 was issued	Notice was issued U/s.148
2.	03.12.2019	Assessee responded to the 148 notice.	
3.	29.09.2020	Notice U/s. 143(2) was issued	Reasons for re-opening was provided to the assessee
4.	15.10.2020	Assessee filed Grounds of objection to the 143(2) notice	



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5.	13.05.2021	The case was transferred to faceless assessment unit	Faceless assessment unit
6.	16.07.2021	Notice u/s. 142(1) was issued	
7.	26.07.2021	Assessee responded to the 142(1) notice	
8.	10.09.2021	Show cause notice was issued to the assessee.	The objection for re-opening was disposed of with a speaking order.
9.	13.09.2021	Draft assessment order was issued to the assessee.	
10.	13.09.2021	Assessee filed their response	
11.	16.09.2021	Hearing was fixed	
12.	17.09.2021	Assessee's response was recorded and considered VC link was shared and the assessee has not joined.	
13.	19.09.2021	VC link was shared and the assessee has not joined.	
14.	18.09.2021	Order u/s 147 was passed.	Final assessment order was passed.

11.1 The Id.DR further submitted that after the assessee has requested for reasons, the AO has provided the reasons on 29.09.2020. Thereafter the assessee has raised objections against the reopening of the case. The AO has disposed of the reasons with a speaking Order on 10.09.2021. The final Order was completed on 18.09.2021. It is submitted that in the whole assessment proceedings, adequate opportunities were provided to the Assessee and after considering all the replies and submissions only the AO has passed the Assessment Order.

(i) The assessment proceedings in this case have been initiated duly serving notice U/s.148 for each AY's separately by recording reasons therein and after obtaining approvals from the specified authorities as mandated by law.

(ii) On being requested by the assessee, the reasons recorded for each year have been communicated to the assessee, in the due course of the assessment proceedings.

(iii) The objections raised by the assessee on the reasons for re-opening of the case have been disposed of by the AO by justifying the reasons to the satisfaction of the assessee, as mandated by the Hon'ble Apex Court verdict and thus, in obedience to law the AO has discharged his duty well before finalization of the assessment proceedings. The assessee HUF has themselves



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submitted before the Id.CIT(A) that, the AO has disposed of the objections raised.

(iv) It is pertinent to mention here that the Hon'ble Jurisdictional Madras High Court has dealt with this specific issue, while dealing with the case of M/s.Home Finders Housing Ltd. in Writ Petition No.1019 of 2017 and W.M.P.Nos.1001 and 6076 of 2017, while examining into the adherence of the AO to legal obligations and the Court directions while disposing of such objections raised by the assessee during the course of assessment proceedings. For clarity and better perception, the abstract of the relevant para of the Hon'ble High Court order is appended here as under:

"It is not in dispute that there is no statutory requirement to pass an order taking into account the statement of objections filed by the assessee after receiving the reasons for invoking section 147. The Supreme Court in GKN Drive shafts (India) Ltd. (supra) has given a procedural safeguard to the assessee to avoid unnecessary harassment by directing the Assessing Officer to pass a speaking order taking into account the objections for reopening the assessment under section 147. The forming of opinion to proceed further by disposal of the objections need not be a detailed consideration of all the facts and law applicable. It must show application of mind to the objections raised by the notice. In case the objections are such that it would require a detailed examination of facts and application of legal provisions, taking into account the assessment order sought to be reopened, the string of violations, suppression of material particulars and transactions which would require considerable time and would be in the nature of a detailed adjudicatory process, the Assessing Officer can dispose of the objections, by giving his tentative reasons for overruling the objections. The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the Assessing Officer to arrive at a prima facie satisfaction that there was escape of assessment warranting reopening the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee."

(v) This particular decision of Hon'ble High Court of Madras has been upheld by the Hon'ble Supreme Court, vide order in Special Leave Petition (C) No.12721 of 2018 dated 18.05.2018 dismissing the SLP filed by the assessee challenging the said Hon'ble High Court order.



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11.2 In this connection, the Id.DR elaborately submitted that the Jurisdictional High Court of Madras has the opportunity in the case of M/s.Home Finders Housing Ltd. vs. Income Tax Officer in W.A. No. 463 of 2017 to examine the intention of the Hon'ble Supreme Court behind giving the directions in the case of M/s.GKN Driveshaft case in the reopening of the assessment proceedings u/s.148 of the Act. The Hon'ble High Court in the elaborate discussion has ruled that the directions as issued by the Hon'ble Supreme Court is the procedural safeguard provided to the assessee to avoid unnecessary harassment by directing the AO to pass speaking order taking into account the objections for the reopening of the assessment. The Hon'ble Supreme Court also ruled that the disposal of the objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the AO to arrive at prima facie satisfaction that there was escapement of assessment warranting reopening of the assessment proceedings.

The relevant paragraphs of the order of the Hon'ble High Court is reproduced as follows:

"16. It is not in dispute that there is no statutory requirement to pass an order taking into account the statement of objections filed by the assessee after receiving the reasons for invoking Section 147 of the I.T. Act. The Hon'ble Supreme Court in GKN Driveshafts (India) Ltd., has given a procedural safeguard to the assessee to avoid unnecessary harassment by directing the Assessing Officer to pass a speaking order taking into account the objections for reopening the assessment under Section 147 of the I.T. Act.

17. The forming of opinion to proceed further by disposal of the objections need not be a detailed consideration of all the facts and law applicable. It must show application of mind to the objections raised by the noticee. In case the objections are such that it would require a detailed examination of facts and application of legal provisions, taking into account the assessment order sought to be reopened, the string of violations, suppression of material particulars and transactions which would require considerable time and would be in the nature of a detailed adjudicatory process, the Assessing Officer can dispose of the objections, by giving his tentative reasons for overruling the objections.

18. The disposal of objections is in the value of a procedural requirement to appraise the assessee of the actual grounds which made the Assessing Officer to arrive at a prima facie satisfaction that there was escape of assessment warranting reopening



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the assessment proceedings. The disposal of such objection must be before the date of hearing and passing a fresh order of assessment. In case, on a consideration of the objections submitted by the assessee, the Assessing Officer is of the view that there is no ground made out to proceed, he can pass an order to wind up the proceedings. It is only when a decision was taken to overrule the objections, and to proceed further with the reassessment process, the Assessing Officer is obliged to give disposal to the statement of objections submitted by the assessee.

19. The core question is as to whether non compliance of a procedural provision would ipso facto make the assessment order bad in law and non-est. The further question is whether it would be permissible to comply with the procedural requirement later and pass a fresh order on merits.

20. The learned counsel for the appellant by placing reliance on an order passed by the learned Single Judge in Mrs. Jayanthi Natarajan (cited supra) submitted that the order being one made without complying with the mandatory procedure, is non est in law and it cannot be given life by complying with the procedure later. In short, it is the contention that non-compliance of a prescribed procedure would nullify the order and the irregularity cannot be cured later.

21. The learned counsel for the Revenue contended that the order dated 14 September 2017 in W.P.No. 1905 of 2017 is bad in law. It was passed ignoring the order passed by a Coordinate Bench which is challenged in this appeal.

22. Since the learned counsel for the appellant placed heavy reliance on the view expressed in Mrs. Jayanthi Natarajan, we have perused the said order. We are in respectful disagreement with the views expressed by the learned Single Judge in W.P.No. 1905 of 2017.

23. The learned Single Judge by placing reliance on the decision of the Supreme Court in Sona Builders, quashed the assessment order without remitting the matter to the Assessing Officer for compliance of the procedure regarding disposal of objection. In Sona Builders, it was the admitted case that only one week before the expiry of the period of limitation, the reassessment proceedings were taken. The Supreme Court found that the notice to the assessee was posted on 24 May 1993. Though there were five days left to pass the order, within the period of limitation, two days were Saturday and Sunday. The Supreme Court on the facts and circumstances of the case quashed the proceedings without remitting it for passing fresh orders. The learned Single Judge was therefore not correct in quoting Sona Builders for giving an indication that in case there is a procedural irregularity, it would vitiate the entire proceedings.

24. In case an order is passed without following a prescribed procedure, the entire proceedings would not be vitiated. It would still be possible for the authority to proceed further after complying with the particular procedure.



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25. The enactments like the Land Acquisition Act, 1894, contain mandatory provisions like Section 5A, the non-compliance of which would vitiate the declaration under Section 6 of the Act. Even after quashing the declaration for non-compliance of Section 5A, the Court would permit the conduct of enquiry and pass a fresh declaration within the period of limitation."

11.3 Further the Id.DR submitted that the safe guards as defined by the Hon'ble High Court of Madras after considering the directions of Hon'ble Supreme Court of India in the case of GKN Driveshaft is fully complied by the AO in this case. He submitted that the reasons were provided to the assessee, the objections of the assessee on the reopening were disposed of in speaking order and the final assessment order is passed only after completing and fully complying with the safe guards as defined by the Hon'ble Jurisdictional High Court, and the compliance of the directions of the Hon'ble Supreme Court and providing sufficient opportunities to the assessee.

12. We have heard the rival contentions on the legal issue raised by the assessee in its cross objections. We have perused the material available on record gone through the orders of the authorities, paper books filed, and written submissions filed by both the parties along with the judicial precedents relied on by both parties. Firstly, the AO has reopened the assessment of the assessee for both the A.Y. 2015-16 and 2016-17 by issuing notice u/s.148 of the Act dated 05.11.2019. We note that the assessee filed a return of income in response to the said notice and requested for providing the reasons for reopening the assessment. Later the AO issued the notice u/s.143(2) of the Act dated 29.09.2020 wherein the AO has sought clarification from the assessee stating as under:

"Issues as per reasons recorded for reopening"

"There was survey on 22.5.2019 in the case of M/s. Texmo industries and M/s. Texmo precision castings in which assessee is partner. As per the amendment made in the partnership deed assessee's share of profit was revised by 0.01% in both the firms as per the supplementary deeds the assessee has withdrawn Rs.207.13 crores from M/s. Texmo industries to settle the dues of the assessee to M/s. Ramachandran Trust for Arjunan. The assessee had also withdrawn Rs.31.96 crores from M/s. Texmo



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precision castings on account of revaluation of business. These incomes have escaped the assessment."

12.1 Subsequently, the assessee filed a reply on 15.10.2020 objecting to the reasons for reopening of assessment u/s.148 of the Act believing to be the reasons for reopening has been recorded. However, the AO proceeded with the scrutiny proceedings by issuing further notices calling for information and after perusal of the submission the AO issued a draft assessment order proposing the variations to be added to the total income. On perusal of the draft assessment order dated 13.09.2021, the AO in para 2.5 incidentally disposes of the objections by concluding as below:

"To conclude, I am emphasising the fact that reopening in the case of the assessee is valid in the light of the facts and established law. The procedural requirements such as proper recording of reasons, service of notices and forwarding of reasons have been met. Thus, based on above comprehensive discussion it is quite clear that the objections raised by the assessee at this score are totally vague and have no force by which these may be substantiated. Hence objections raised by the assessee are hereby rejected and treated as settled."

12.2 Subsequently, immediately within five (5) days, the AO passed the final assessment order u/s.147 of the Act dated 18.09.2021.

12.3 On examination of the notice u/s.143(2) of the Act dated 29.09.2020 issued by the AO, we find that the AO has commenced the scrutiny proceedings by providing opportunity to the assessee by seeking the details, documents and clarifications in relation to reassessment as per the annexure. It is pertinent to note that the AO has neither provided the exact reasons recorded nor disposed of the objections raised by the assessee as mandated by the the Hon'ble Supreme Court by giving the directions in the case of M/s.GKN Driveshaft India Ltd Vs.ITO [259 ITR 19 (SC)] before commencing the assessment proceedings.

12.4 We further note that the draft assessment order dated 13.09.2021 proposing the variation in the assessment, the revenue claimed that the AO has disposed of the objections in the above draft assessment order is clearly violation of the principle



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laid down by the Hon'ble Supreme Court in the case of M/s.GKN Driveshaft India Ltd Vs.ITO(supra) and hence we do not countenance the action of the AO in the above conspectus of the matter.

12.5 On this issue the Hon'ble Supreme Court in the case of M/s.GKN Driveshaft India Ltd Vs.ITO and various Hon'ble High Courts and Tribunals in catena of decisions have decided the issue in question by giving principles to be followed strictly by the revenue.

12.6 The Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Limited v. ITO [2003] 259 ITR 19 [SC]* wherein it has been clearly laid down as under:

"However, it was clarified that when a notice under section 148 is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notice. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons had been disclosed in the proceedings, the Assessing Officer had to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment." (emphasis supplied by us)

12.7 The decision of the coordinate bench of Tribunal in the case of *IDFC First Bank Ltd. v. PCIT/ACIT ITA No. 1170 & 1171/CHNY/2024 (AY 2016-17)* wherein in similar set of facts, the Tribunal has quashed the re-assessment proceedings conducted contrary to the procedure / law laid down by the Hon'ble Apex Court in the case of *GKN Driveshafts Ltd. (supra)*. Relevant findings of the Tribunal are reproduced hereunder:

"after a notice u/s.148 of the Act has been issued by him, the assessee needs to file a return pursuant to such a notice; and if the assessee seek reason for issuing such notice, the AO is bound to furnish reasons for reopening the assessment, within a reasonable time; and on receipt of reasons, the assessee is entitled to file objections [against issuance of re-opening notice] and in that event, the AO is bound to dispose off the same (objections) by passing a speaking order before proceeding with there-assessment in respect of assessee's case.



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Where the AO without disposing of the objections raised by the assessee, had intriguingly dealt with the objections against the reopening of assessment in the body of re-assessment order, which action of the AO was in gross defiance to the binding direction of the Hon'ble Supreme Court (supra) and was an attempt to over-reach the Apex Court by noncompliance to the procedure stipulated therein. Therefore, the impugned action of the AO is an attempt to defeat the purpose of such an exercise to be carried out by the AO and against the binding decision of the Hon'ble Supreme Court. It is noted that the AO has disposed off the objections in the body of the reassessment order which action of the AO is gross-defiance to the order of the Hon'ble Supreme Court in the case of M/s.GKN Driveshafts (India) Ltd. and against the Hon'ble Bombay High Court in the case of Asian Paints Ltd. Bharat Jayanthi Lal Patel (supra), wherein their Lordships have given clear directions that the AO must dispose off the objections raised by the assessee against re-opening and facilitate at least four (4) weeks time before re-assessment order is framed, so that assessee may prefer filing of Writ Petition before the Hon'ble jurisdictional High Court against the re-opening of assessment.

In the light of the above discussion, we are of the view that the assessee succeeds on the legal issue that the AO failed to comply with the binding directions of the Hon'ble Supreme Court in the case of M/s.GKN Driveshafts (India) Ltd., before framing the reassessment order. The AO rejecting objections of the assessee against re-opening by merely doing so while passing the re-assessment order, wouldn't come to the rescue of the Revenue because such an action of AO is noted to be in gross defiance to the binding order of the Hon'ble Supreme Court; and the AO couldn't have over reached the order of the Hon'ble Supreme Court by disposing off the objections while framing the re-assessment order, which defeats the purpose of such an exercise as discussed supra. Therefore, we hold that the omission on the part of the AO to comply with the directions of the Hon'ble Supreme Court in the case of M/s.GKN Driveshafts (India) Ltd., strikes at the root of the jurisdiction of the AO to re-open the assessment and consequent passing of reassessment order dated 31.03.2022 is held to be non-est in the in the eyes of law and all other grounds are academic and not adjudicated. Therefore, on the legal issue as discussed, we quash the re-assessment order dated 31.03.2022 passed u/s.147/143(3) of the Act for AY 2016-17."

12.8 The judgement in the case of *CIT v. Fomento Resorts and Hotels Ltd., (Bom.)*; ITA No. 71 of 2006, dated 27.11.2006, where the Tribunal held that though the reopening of the assessment is within three years from the end of the relevant assessment year, since the reasons recorded for reopening the assessment were not



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furnished to the assessee till the completion of the assessment, the reassessment order cannot be upheld.

12.9 Further, in the case of Home Finders Housing Ltd. v. ITO (2018) 404 ITR 611 (Mad-HC), as relied by the Revenue is addressed in the aforesaid decision of *IDFC Bank Ltd. V. PCIT/ACIT (supra)* wherein it was distinguished as under:

"the Hon'ble Madras High Court was of the view that non-compliance of the procedure indicated in the case of M/s. GKN Driveshafts (India) Ltd., was only an irregularity which could be cured by remitting the matter to the authority. The Ld. Sr. Counsel further pointed out that the Hon'ble Madras High Court in Home Finders Housing Ltd. (supra), noted that the assessee in that case at no point of time requested the AO to pass a speaking order disposing off the objections (refer Para No.12). However, in the present case, the Ld. Sr. Counsel pointed out that the assessee had specifically requested the AO to pass a speaking order disposing off the objections as laid down by the Hon'ble Supreme Court in the case of M/s. GKN Driveshafts (India) Ltd. (supra) and in addition to such a request, also prayed before the AO to dispose off the objections at least four (4) weeks before framing of re-assessment order as held by the Hon'ble Bombay High Court in the case of Asian Paints Limited v. DCIT & anr. (2008) 296 ITR 90 (Bom) and also in the case of Bharat Jayantilal Patel v. UOI reported in [2015] 378 ITR 596 (Bom.), which fact we find from perusal of Page No.86 of the Paper Book. Thus, according to the Ld. Sr. Counsel, it can be noted that the decision of the Hon'ble Madras High Court in the case of Home Finders Housing Ltd. (order dated 25.04.2018), is distinguishable on the facts and not applicable to the present case."

Further, it was held that, "the order in the case of Home Finders Housing Ltd., (supra) was a decision rendered earlier to the decision held by the Hon'ble Division Bench in CIT v. Janak Shanthilal Mehta (supra) and in such an event i.e. when there are two conflicting views between the order of Hon'ble High Court of co-equal strength (of the same Court) then, later pronouncement of the Hon'ble Court is binding on us."

12.10 On perusal of the records, we note that the AO has miserably failed to supply reasons recorded for the reopening of the assessment where from one can see whether the legislative scheme is fulfilled. The Income-tax Officer can clothe himself with the jurisdiction to assess or reassess u/s.147(a) of the Act only if he records the reasons which can stand the test of relevance in accordance with the judicial pronouncements and after obtaining necessary sanction. This has been further fortified in the case of *Kavee Enterprises (P.) Ltd. v. Commissioner of Income-tax*



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[2008] 170 Taxman 264 (Jharkhand)/[2008] 301 ITR 156 (Jharkhand), wherein the Hon'ble High Court held as under:

7. From bare reading of the aforementioned two provisions it is manifestly clear that the jurisdiction of the Assessing Authority to assess or reassess under section 147(a) of the Act is subject to the condition that he has "reason to believe" that the assessee failed to disclose all material facts necessary for assessment for the relevant assessment year. It is also incumbent upon the Assessing Officer to comply with the mandatory requirements of section 148 which casts an obligation on him to issue notice before making any assessment or reassessment and before issuance of notice he must record his reasons.

8. The question referred in this case is no longer res integra. In the case of GKN Driveshafts (India) Ltd. (supra), the assessee challenged the validity of notice issued under sections 148 and 143 of the Act. While disposing of the application Their Lordships of the Supreme Court observed:

"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years." (p. 20)

9. In the case of Agarwalla Bros. (supra) the Division Bench of the Patna High Court was considering a similar question. In that case, in the original assessment the Income-tax Officer accepted the cost of construction of the various properties as return. Subsequently on the basis of enquiry, the Income-tax Officer was of the opinion that the cost of construction was understated and assessment was re-opened under section 147(a) of the Act. The Division Bench answering the question held that for determining the validity of assumption of jurisdiction by the Income-tax Officer under section 147(a) of the Act, the Tribunal has to confine itself only to the recorded reasons and in case the recorded reasons failed to stand the test of "reasons to believe" within the meaning of section 147(a), the very initiation of the proceedings can be said to be ab initio void rendering all consequential actions including the order of assessment as being ineffective and non est. The Division Bench, considering the decisions of various High Courts, observed :—

"Therefore, the legislative scheme is that the Income-tax Officer can clothe himself with the jurisdiction to assess or reassess under section 147(a) of the Act only if he records the reasons which can stand the test of relevance in accordance with the judicial pronouncements and after obtaining necessary



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sanction as stated above notices are issued by him but if, in any case, it is found that the reasons recorded by him are not germane to the exercise of jurisdiction under section 147(a) of the Act, then the very assumption of jurisdiction will be ab initio void rendering the entire process of assessment as a nullity. There can be hardly any doubt in holding that the recording of the reasons is a pre-requisite to the assumption of jurisdiction by the Income-tax Officer for initiating the proceedings under section 147(a). The reasons so recorded acquire much significance when the action is taken under clause (a) of section 147 because it is only the recorded reasons which can indicate as to why the Income-tax Officer was made to believe that income has escaped assessment for the relevant assessment year. Further, the language employed in section 151 clearly leads to the conclusion that the Board or the Commissioner of Income-tax, while according, sanction for issuance of notice under section 148 and for coming to an objective conclusion authorizing the Income-tax Officer to take action under section 147(a), are required to confine themselves only to the reasons recorded by the Income-tax Officer.

Therefore, looking at the entire scheme and purpose of the Act, I am of the considered view that the validity of the assumption of jurisdiction under section 147(a) can be tested only by reference to the reasons recorded under section 148(2) of the Act and the Income-tax Officer is not authorized to refer to any other reason even if it can be otherwise inferred and/or gathered from the records. If the reasons so recorded are such that, on their basis, it can possibly be said that income chargeable to tax has escaped assessment for a certain assessment year because of the omission of failure on the part of the assessee to make a return for that year or to disclose fully and truly all material facts necessary for such assessment, there can be a valid case for invoking the jurisdiction conferred by clause (a) of section 147. If, on the contrary, the reasons recorded by the Income-tax Officer cannot lead to such a conclusion, the proceedings initiated by the Income-tax Officer under that clause must be declared as ab initio void." (p. 792)

10. *In the instant case, admittedly the assessee filed his original return on 12-4-1989 showing loss of Rs. 646. Both the counsels appearing on behalf of the revenue and the assessee, have filed photo copies of order sheets showing that the Assessing Officer issued notice under section 148 of the Act. The relevant orders passed are quoted hereinbelow :—*

"3-12-1990 :—Letter regarding valuation received from D/C Asstt. Range, that is kept in file.Sd/ I.T.O.

6-12-1990 :—Issue notice under section 148 to consider the cost of construction as reported by the department valuer.Sd/ I.T.O.

10-1-1990 :—Seen assessee's reply to treat the return filed on 12-4-1989 as return in compliance of notice under section 148.Sd/ I.T.O. "

11. *The Tribunal, in the statement of facts, has mentioned that the notice was issued in prescribed form without assigning any reason. It was also mentioned that after the receipt of notice the assessee requested the Assessing Officer to inform the reasons why action under section 148 of the Act had been taken. It is, therefore, clear that no*



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reasons have been assigned by the Assessing Officer while issuing notice under section 148 of the Act nor the assessee was furnished the detailed reasons for issuance of notice under the provisions of the said section of the Act. Section 148(2) of the Act, in a very specific term, provides that while issuing notice under section 148(1) of the Act, the Assessing Officer must assign reasons. Admittedly the same has not been done by the Assessing Authority in the instant case.

12. Having regard to the facts of the case and the law discussed hereinabove, I am of the definite view that the mandate of sections 147 and 148 of the Act have not been complied with and, therefore, the entire proceeding and the consequential orders become void, ab initio. Consequently the action of the Assessing Officer is declared as illegal, arbitrary and unjustified.

13. In the result, the questions referred are answered accordingly."

12.11 In view of the facts and circumstances of the case, we have observed that the AO has neither provided any reasons for reopening of the assessment to the assessee except vaguely mentioned it in his notice issued u/s.143(2) of the Act dated 29.09.2020 nor disposed of the objections raised by assessee in his reply filed on 15.10.2020. We find that the AO has made a passing remarks by stating the objections disposed of in his draft assessment order, no speaking order has been made by the AO for disposing the objections before commencing the reassessment proceedings as law laid down by the hon'ble courts as discussed above. Therefore, on examination of records we have not come across any proper valid reasons recorded by the AO for reopening said reassessment for both the assessment years 2015-16 and 2016-17. We further find that the assessee was not able to take or challenge other legal issues emanating from the said purported reasons recorded by the AO. Meaning thereby the assessee was barred from taking any other legal actions arising from purported reasons recorded for the default attributable to the AO.

12.12 In light of the above discussion and reasoning and respectfully following decisions discussed, we hold that the omission on the part of the AO to comply with the directions of the Hon'ble Supreme Court in the case of M/s.GKN Driveshafts (India) Ltd., strikes at the root of the jurisdiction of the AO to re-open the



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assessment and consequent passing of reassessment orders dated 18.09.20201 for the A.Y. 2015-16 and 21.09.2021 for the A.Y.2016-17 are held to be non-est in the eyes of law. Therefore, on the legal issue also as discussed, we quash the reassessment orders dated 18.09.20201 for the A.Y. 2015-16 and 21.09.2021 for the A.Y.2016-17 passed u/s.147 of the Act.

12.13 As far as the grounds and submissions with regard to assessing the income under "income from Other sources" made by the revenue, since both the appeals have been disposed of by us holding in favour of the assessee on legal and on merits, therefore this ground becomes academic and infructuous.

12.14 In the result, both the appeals of revenue for the A.Ys.2015-16 and 2016-17 are dismissed and Cross objections of the assessee are allowed.

Order pronounced on the 7th day of August, 2025, in Chennai.

Sd/-

(एस.आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 7th August, 2025.

KB/-

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF